

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: John M. & Gloria J. Paolino)
Dist. 2, Map 66A, Group A, Control Map 54P,) Cumberland County
Parcel 37.00, S.I. 000)
Residential Property)
Tax Year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$60,000	\$325,100	\$385,100	\$96,275

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on September 5, 2007 in Crossville, Tennessee. The taxpayers represented themselves. The assessor of property was represented by Deputy Assessor Mary Cox. Also in attendance at the hearing was Fred Wilson, an appraiser with the Division of Property Assessments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence constructed in 2006 located at 358 Rotherham Drive in Fairfield Glade, Tennessee.

The taxpayers contended that subject property should be valued at \$310,000. In support of this position, two appraisal reports prepared by Stephen J. Keyes were introduced into evidence. The first appraisal was made in conjunction with a construction loan and estimated subject property's value upon completion at \$254,000. That appraisal was made as of April 21, 2005. The second appraisal was made for refinancing purposes and concluded subject property had a fair market value of \$310,000 as of April 17, 2007.

The assessor contended that subject property should remain valued at \$385,100. In support of this position, three comparable sales were introduced into evidence.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$385,100 based upon the presumption of correctness attaching to the decision of the Cumberland County Board of Equalization. As will be discussed below, the administrative judge finds that neither party introduced

sufficient evidence to establish subject property's market value on the relevant assessment date of January 1, 2007.

Since the taxpayers are appealing from the determination of the Cumberland County Board of Equalization, the burden of proof is on the taxpayers. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that January 1, 2007 constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). The administrative judge finds the exact assessment date especially important in this appeal because of a declining real estate market in 2007.

The administrative judge finds that Mr. Keyes' appraisal reports cannot provide a basis of valuation for any of several reasons. Most importantly, the administrative judge finds that Mr. Keyes was not present to testify or undergo cross-examination. The administrative judge finds that the Assessment Appeals Commission has historically refused to consider appraisal reports when the appraiser is not present. See, e.g., the oft-cited case of *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

* * *

. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2. Moreover, the administrative judge finds even the taxpayers implicitly conceded that Mr. Keyes' April 21, 2005 appraisal of \$254,000 does not reflect subject property's market value on January 1, 2007. Finally, the administrative judge finds that Mr. Keyes' appraisal as of April 17, 2007 must be presumed to reflect declines in the real estate market since January 1, 2007. Unfortunately, Mr. Keyes was not present to address this issue.

The administrative judge finds that the assessor's proof also cannot provide a basis of valuation absent additional analysis. The administrative judge finds that the assessor's sales were not adjusted despite significant differences between the subject and comparables such as sales #1 and #2 being located on the golf course unlike the subject. The administrative judge finds that the Assessment Appeals Commission addressed the need to adjust

comparable sales in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning as follows:

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$60,000	\$325,100	\$385,100	\$96,275

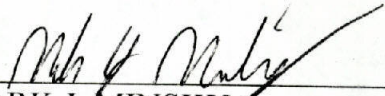
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 21st day of September, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: John M. & Gloria J. Paolino
Ralph Barnwell, Assessor of Property